IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HARRY LESZCZUK, WILLIAM T. REYNOLDS, and HAROLD S. WEAVER, Plaintiffs vs. LUCENT TECHNOLOGIES, INC., Defendant	)	Civil Action No. 03-CV-05766

* * *

APPEARANCES:

KEVIN A. MOORE, ESQUIRE
On behalf of Plaintiffs

THEODORE A. SCHROEDER, ESQUIRE
ROBERT W. CAMERON, ESQUIRE
On behalf of Defendant

* * *

O P I N I O N

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on Defendant's Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, filed December 23, 2004. For the reasons expressed below, we deny the motion to dismiss Count I of the Complaint, which seeks post-termination benefits under an employee welfare benefit plan. We grant the motion to dismiss Count II, which alleges that defendant employer acted in bad faith in violation of Pennsylvania state law, when the employer

allegedly discharged plaintiff employees prematurely to prevent them from receiving separation benefits under the plan.

Procedural History

The within civil action was initiated on October 17, 2003 by plaintiffs' filing of their Complaint. The action is before the court on federal question jurisdiction. 28 U.S.C. § 1331. Venue is appropriate because the events at issue occurred in this district in Berks County, Pennsylvania. 28 U.S.C. §§ 118, 1391. Plaintiffs have demanded a trial by jury.

Facts

Based upon the averments of plaintiffs' Complaint, which for purposes of this motion we are bound to accept as true, the pertinent facts are as follows.

Plaintiffs were each employed by defendant at defendant's facility in Reading, Berks County, Pennsylvania. Plaintiff Harry Leszczuk was employed as a Technical Manager; plaintiffs Reynolds and Weaver were both employed as Technical Staff-I Management employees. Plaintiff Leszczuk had been employed by defendant and its predecessor companies for over 20 years; plaintiff Reynolds, for over 17 years; and plaintiff Weaver, for over 18 years.

In the following numbered paragraphs in their Complaint, plaintiffs allege to the following facts:

> 12. At all times material hereto, Lucent has maintained a Separation Plan for Management and Lucent Business Assistants (LBA) Employees ("Plan").
>
> 13. The Plan is an ERISA qualified employee welfare benefit plan as defined by ERISA.
>
> 14. The Plan provides participants with post-termination income, insurance benefits and other benefits....
>
> 15. Pursuant to the Plan, Lucent is the Plan Administrator and Lucent's Employee Benefits Committee (EBC) and Senior Vice President of Human Resources are the named fiduciaries of the Plan.
>
> 16. It is averred that at all times material hereto, said named fiduciaries act under the direction and control of Lucent with Lucent's knowledge and consent.
>
> 17. Plaintiffs are Plan participants within the meaning of the Plan.
>
> 18. At all times material hereto, Plaintiffs had satisfied all conditions precedent to vesting and awarding of post-termination benefits under the Plan.

Complaint, pages 2-3.

On October 17, 2001 defendant employer notified plaintiffs that they were under investigation for failing to work 40 hours per week at the Reading facility. On October 25, 2001, plaintiffs received letters terminating their employment "for cause."

Plaintiffs aver that prior to their terminations, they had learned that defendant was transferring overseas the work conducted by plaintiffs' department in Reading. Subsequent to their termination, plaintiffs learned that the employees within the department in which they worked had been officially informed of the impending work transfer.

Plaintiffs contend in this action that their "for cause" terminations were "pretextual and intentionally designed to prevent them from exercising their rights in the benefits of the Plan."[1] Plaintiffs raise their claim under Section 510 of ERISA. 29 U.S.C. § 1140. This section provides in part that "It shall be unlawful for any person to discharge ... a participant or beneficiary ... for the purpose of interfering with the attainment of any right to which participant may become entitled under the plan ...." 29 U.S.C. § 1140. Additionally, plaintiffs raise a Pennsylvania state law bad faith claim under 42 Pa.C.S.A. § 8371.

Standard for Reviewing Rule 12(b)(6) Motion to Dismiss

A Rule 12(b)(6) motion to dismiss examines the sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45, 78 S.Ct. 99, 102, 2 L.Ed.2d 80, 84 (1957). In determining the sufficiency of the complaint the court must accept all plaintiffs' well-pled factual allegations as true and draw all

[1] Complaint, paragraph 29.

reasonable inferences therefrom in favor of plaintiffs. Graves v. Lowery, 117 F.3d 723, 726 (3rd Cir. 1997).

> [T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.

Conley, 355 U.S. at 47, 78 S.Ct. at 103, 2 L.Ed.2d at 85. (Internal footnote omitted). Thus, a court should not grant a motion to dismiss unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Graves, 117 F.3d at 726, citing Conley, 355 U.S. at 45-46, 78 S.Ct. at 102, 2 L.Ed.2d at 84.

Discussion

Defendant challenges each count of plaintiffs' Complaint. Defendant seeks dismissal of Count I of the Complaint, arguing that plaintiffs lack standing to bring an ERISA claim. Additionally, Defendant seeks dismissal of Count II, arguing that plaintiffs' Pennsylvania-law-bad-faith claim is preempted by ERISA.

Defendant argues that plaintiffs have no standing to bring a claim under ERISA because plaintiffs are not plan participants. Defendant notes that "participant" is defined by ERISA as "any employee or former employee of an employer ... who

is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer...." 29 U.S.C. § 1002(7).

Defendant argues that to establish that plaintiffs are participants, plaintiffs must either show a colorable claim to vested benefits or have a reasonable expectation of returning to work. Defendant argues that plaintiffs can show neither. As such, defendant contends that plaintiffs are not participants and accordingly lack standing to bring an ERISA claim. Plaintiffs disagree.

Defendant correctly notes that "whether former employees are 'participants' depends on whether 'they have either a colorable claim to *vested* benefits in the Plan or a reasonable expectation of returning to employment at' the Company." Miller v. Rite Aid Corporation, 334 F.2d 335, 342 (3rd Cir. 2003) (emphasis in original)(quoting Shawley v. Bethlehem Steel Corporation, 989 F.2d 652, 654 (3rd Cir. 1993)).

Defendant argues that plaintiffs lack a colorable claim to vested benefits because they were terminated for a reason not related to, or covered by, the terms of the plan. Defendant makes the following argument:

> Because Plaintiffs did not voluntarily elect to terminate their employment, they can only be participants if they were involuntarily terminated in accordance with Lucent's Force Management Guidelines.... Plaintiffs do not allege, however, that they were terminated as part of a reduction-in-force under Lucent's Force Management Program.

Defendant's Motion to Dismiss at page 5.

Contrary to defendant's argument, plaintiffs clearly aver that their termination was based upon a reduction in force necessitated by defendant's shifting of production operations overseas. Plaintiffs attach to the Complaint a copy of defendant's "U.S. Force Management (FMP)". Section A of that document is titled "Lucent Technologies Inc. Separation Plan for Management and LBA Employees Plan Document and Summary Plan Description." Relying on FMP and Section A, plaintiffs argue that they would have been discharged in a manner covered by the FMP, section A, but for the defendant preemptively discharging them under the pretext of cause.

The circumstances under which plaintiffs were released is a factual dispute in these proceedings. Section 510 of ERISA prohibits the act which plaintiffs contend defendant committed: "discharg[ing]" an employee "for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan."

Given plaintiffs' averments that defendant engaged in conduct prohibited in Section 510, dismissal of plaintiffs' ERISA

claim at this early stage of the proceeding would be premature. Defendant essentially asks the court to accept its factual premise that the plaintiffs were discharged for cause. Given our standard for reviewing Rule 12(b)(6) motions to dismiss, we must reject defendant's argument.

We are not persuaded by defendant's argument that, pursuant to Miller, supra, ERISA does not define "participant" to include former employees who "might have" become eligible to receive a benefit. In Miller, the employee, was designated to be laid off, but his employment period was temporarily extended. During this extension, the employee voluntarily resigned his position.

The United States Court of Appeals for the Third Circuit noted that under the applicable plan provisions, the employee might have been eligible for benefits had he continued his employment to the conclusion of the extension period. However, because he voluntarily resigned his employment, he was not eligible for benefits. The Third Circuit noted that section "1002(7) does not define a former employee who 'might have' become eligible for benefits as a participant under ERISA." Miller, 334 F.3d at 342.

We find Miller distinguishable from the case before this court. Plaintiffs correctly note that in this case, unlike Miller, the employees did not voluntarily leave employment prior

to the time they would have become eligible for benefits. Additionally, unlike this case, there were no allegations in Miller of employer wrongdoing related to frustrating employees "attainment of any right to which such participant may become entitled under the plan...." 29 U.S.C. § 1140. The prohibition of Section 510 was to prevent employers from engaging in the type of conduct averred by plaintiffs in their Complaint. This same rationale is not implicated in Miller. Accordingly, we find Miller distinguishable and not controlling of this case.

Defendant argues that plaintiffs' bad-faith claim under Pennsylvania law, 42 Pa.C.S. § 8371, is pre-empted by ERISA. At the time the motion was made, this issue was one of contention upon which there was a split of authority in the United States District Court for the Eastern District of Pennsylvania. Defendant in its motion and plaintiffs in their response, addressed the conflicting positions, respectively offering arguments in favor of dismissing and sustaining the bad faith claim.

The issue has recently been decided by the Court of Appeals for the Third Circuit. Barber v. UNUM Life Insurance Company of America, No. Civ. D. 03-4363, 2004 U.S.App. LEXIS 18827 (3rd Cir. Sept. 7, 2004)(relying on Aetna Health Incorporated v. Davila, ___ U.S. ___, 159 L. Ed. 2d 312, 124 S.Ct. 2488 (2004)). In Barber, the Third Circuit concluded

that "Pennsylvania's bad faith statute ... is expressly preempted by ERISA." Barber, 2004 U.S.App. LEXIS 18827 at *25-26. Therefore, pursuant to Barber, plaintiffs' bad-faith claim in count II of the Complaint must be dismissed.

Conclusion

For the foregoing reasons, we deny defendant's motion to dismiss Count I of plaintiffs' Complaint. We grant defendant's motion to dismiss Count II of plaintiffs' Complaint for failure to state a claim upon which relief can be granted. Accordingly, we dismiss Count II of plaintiffs' Complaint.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HARRY LESZCZUK,	)	
WILLIAM T. REYNOLDS, and	)	Civil Action
HAROLD S. WEAVER,	)	No. 03-CV-05766
	)	
Plaintiffs	)	
	)	
vs.	)	
	)	
LUCENT TECHNOLOGIES, INC.,	)	
	)	
Defendant	)	

O R D E R

NOW, this 29th day of September, 2004, upon consideration of Defendant's Motion to Dismiss, filed December 23, 2003; upon consideration of Plaintiffs' Response to Defendant's Motion to Dismiss, which response was filed February 3, 2004; upon consideration of plaintiffs' Complaint filed October 17, 2003; upon consideration of the Exhibits attached to the Complaint; it appearing that Count I of the Complaint alleges a violation of Section 510 of the Employment Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1140; it further appearing Count II of the Complaint alleges a bad faith

claim arising out of 42 Pa.C.S. § 8371; and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that Defendant's motion to dismiss is granted in part and denied in part.

IT IS FURTHER ORDERED that defendant's motion to dismiss Count I of plaintiffs' Complaint is denied.

IT IS FURTHER ORDERED that defendant's motion to dismiss Count II of plaintiffs' Complaint is granted.

IT IS FURTHER ORDERED that Count II of plaintiffs' Complaint is dismissed.

BY THE COURT:

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James Knoll Gardner

United States District Judge